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Human Rights Committee

Decision adopted by the Committee under the Optional Protocol, concerning communication No. 2415/2014*, **

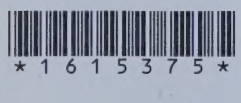
Communication submitted by:	A.M.M.[1] (represented by counsel, Arbab Perveez, of Adil Advokate)
Alleged victim:	The author
State party:	Denmark
Date of communication:	2 June 2014 (initial submission)
Document references:	Decision taken pursuant to rule 97 of the Committee's rules of procedure, transmitted to the State party on 4 June 2014 (not issued in document form)
Date of adoption of decision:	14 July 2016
Subject matter:	Deportation to Pakistan
Procedural issues:	Substantiation of claims; admissibility *ratione materiae*
Substantive issues:	Expulsion of aliens; risk of irreparable harm in country of origin; right to life; torture, cruel, inhuman or degrading treatment or punishment; right to political freedom
Articles of the Covenant:	6, 7, 14 and 19
Articles of the Optional Protocol:	5 (2) (a) (b)

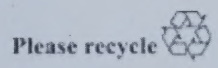
* Adopted by the Committee at its 117th session (20 June-15 July 2016).

** The following members of the Committee participated in the examination of the present communication: Yadh Ben Achour, Lazhari Bouzid, Sarah Cleveland, Olivier de Frouville, Ahmed Amin Fathalla, Yuji Iwasawa, Ivana Jelić, Photini Pazartzis, Mauro Politi, Sir Nigel Rodley, Víctor Manuel Rodríguez-Rescia, Fabián Omar Salvioli, Yuval Shany and Margo Waterval.

[1] Requested to keep his name confidential.

GE.16-15375(E)





1.1 The author of the communication is A.M.M., a national of Pakistan born on 12 May 1957. He claims that the State party will violate his rights under articles 6, 7, 14 and 19 of the Covenant if he is returned to his country of origin. The Optional Protocol entered into force for the State party on 6 January 1972.

1.2 A.M.M. entered Denmark on 28 August 2009 with a Schengen visa issued by the Danish embassy in Islamabad. At the time of submission, he was in detention awaiting deportation. The author submits that, if Denmark proceeds with his forcible return to Pakistan, that would constitute a violation of his rights under articles 6, 7, 14 and 18[2] by the State party. The author is represented by counsel.

1.3 On 4 June 2014, pursuant to rule 92 of its rules of procedure, the Committee, acting through its Special Rapporteur on new communications and interim measures, decided not to issue a request for interim measures.

Facts as presented by the author

2.1 A.M.M. is a Pakistani national, ethnic Punjabi and Sunni Muslim from Lahore. A.M.M. is from a family affiliated with the Pakistan Peoples Party, founded by Zulfikar Ali Bhutto in 1973. In a judiciary-sanctioned decision, Zulfikar Ali Bhutto was hanged in 1979. A.M.M. describes his family as "diehard workers" for the Pakistan Peoples Party and he and his brothers were held in prison in the 1980s and subjected to torture for their political involvement with the Party. While three of his brothers escaped to Denmark in 1986 and were granted political asylum, the author stayed in Pakistan.

2.2 Benazir Bhutto, Zulfikar Ali Bhutto's daughter, assumed the party's leadership and served as prime minister twice, first from 1988 to 1990 and then from 1993 to 1996. During Benazir Bhutto's term, the author was appointed as assistant manager of administration and personnel in a subgovernmental agency in Karachi and one of his brothers as a media consultant. After Benazir Bhutto left office in 1996 and Nawaz Sharif of the Pakistan Muslim League came to power the author claims he and his family "found themselves again in trouble".

2.3 During the term of the Pakistan Muslim League, the author was approached by one of his brother's friends, who invited him to go to India as part of a peace delegation. That person took care of the visa and in February 2005 the author travelled to New Delhi, by bus, as part of a group of about sixteen or seventeen others, all of whom were students, unlike him. He claims that, when he returned, he was repeatedly contacted, by phone and in person, by an individual from the intelligence service of Pakistan. After some time, an India delegation visited Pakistan as part of the Indo-Pak Forum for Peace. When the Indian delegation left, the man from the intelligence service told the author there would not be peace between India and Pakistan and that he should work for them. The author was afraid of refusing and tried to avoid him, but when he did not answer his phone he was approached in person, and one day he was told "we are friends of friends and we are enemies of enemies, and if you avoid us, we are there to get you".

2.4 The author submits that the intelligence service then started to interfere with his steel business (a dealership of Pakistan Steel Mills, a State-owned corporation) and the situation became so difficult that he could only either work for them or run away. He followed his wife's and mother's advice to apply for a visa to Denmark, as he had already visited the

[2] In the initial communication, the author claimed a violation of article 18 of the Covenant. However, in his comments on the State party's observations, he submitted that he had meant to invoke article 19 of the Covenant.

country in 1996 to see his brothers. He took all of his documents, as he intended to apply for political asylum.

2.5 The author arrived in Denmark on 28 August 2009 on a tourist visa and stayed with his brothers. He requested an extension of his visa but it was denied and upon his brothers' advice he did not apply for asylum, afraid of being arrested and deported back to Pakistan. Subsequently, the author contacted Amnesty International, which recommended that he apply for asylum as soon as possible, which he did on 19 January 2012.

2.6 After the author applied for asylum, he lived in asylum centres for a year. During the interview process with the police, the author felt uncomfortable relating the details of his story because the appointed interpreter knew him and his family. The author submits that, during that process, he was receiving threatening messages from the people in the intelligence service in Pakistan, who were not pleased with his departure from the country. He further submits that, if he were deported back to Pakistan, he would be arrested at the airport by the intelligence service and he fears for his life under their custody. In that context, he submits that the intelligence agencies had pressured him into allowing a chairman of Pakistan Steel Mills to misuse his business. As a consequence, investigations are now ongoing against the author.

2.7 The author's request for asylum was refused on 11 May 2012 by the Danish Immigration Services. The decision was confirmed by the Danish Refugee Board on 10 October 2012, which considered that the author had failed to provide coherent and convincing explanations regarding the intelligence service's enquiries to him. The author requested that the Danish Refugee Board reopen his asylum case twice, first by submitting additional documents and second by invoking the overall situation in Pakistan. The Danish Refugee Board refused to reopen the case, first on 21 March 2014 and then again on 4 June 2014, on the grounds that no new relevant information had been submitted, and upheld its decision of 10 October 2012.

Complaint

3.1 The author submits that his deportation to Pakistan would lead to his arrest by the intelligence service, who would eventually kill or torture him, and the State party will violate his right to life and the right not to be tortured that are guaranteed under articles 6 and 7 of the Covenant, respectively.

3.2 The author also invokes a violation of article 14 of the Covenant, because the decisions of the Refugee Board became final without the possibility of them being appealed before the courts, which in the author's opinion is discriminatory against foreigners seeking asylum in the State party. The author further invokes a violation of his right to political freedom under article 18 of the Covenant.[3]

State party's observations on admissibility and the merits of the communication

4.1 In its submission dated 4 December 2014, the State party provided observations on admissibility and the merits of the communication.

4.2 The State party submits that the communication should be declared inadmissible and, if the Committee considers it admissible, the State party submits that it will not violate the provisions under articles 6, 7, 14 and 18 of the Covenant if the author is returned to Pakistan.

[3] See footnote 2 above.

4.3 The State party submits that the author entered Denmark in possession of his genuine Pakistani passport provided with a Schengen visa issued by the Danish embassy in Islamabad, valid from 16 August 2009 to 11 November 2009. On 19 October 2009, the Danish Immigration Service refused the author's application for an extension of his visa. On 19 January 2012, the author applied for asylum. In the period between 12 November 2009 and 19 January 2012, the author stayed in Denmark without a right of residence.

4.4 On 11 May 2012, the Danish Immigration Services refused the author asylum and, on 10 October 2012, the Danish Refugee Appeals Board confirmed that refusal. On 22 October 2012, the author requested in writing that the Refugee Appeals Board reopen the asylum proceedings, which request was denied on 21 March 2014. On 26 March 2014, by personal inquiry at the secretariat of the Refugee Appeals Board, the author again requested to reopen the asylum proceedings, which was again refused on 4 June 2014.

4.5 The State party submits that the decision of the Danish Refugee Appeals Board of 10 October 2012 was made taking in consideration the information provided by the author regarding his political activities and related imprisonment in the 1980s and his participation in a peace mission to India in 2005, after which he was contacted several times by the Pakistani intelligence service to work for them, and that, given his failure to accept, they started interfering with his business. The State party submits that it cannot accept the author's statement of his grounds for seeking asylum as a fact and that the author did not provide a plausible explanation for taking two and a half years before applying for asylum.

4.6 The State party submits that the Refugee Appeals Board decision took into account that the author failed to provide a coherent and convincing statement of the inquiries made of him by the intelligence service, and that the number of those inquiries differed according to the author's statements. The Refugee Appeals Board cannot consider as a fact that the intelligence service had made only a few inquiries over several years and accepted the author's evasive responses if it had really wanted him to collaborate and observes that the author was not subject to reprisals. The Refugee Appeals Board also took into account that the author was allowed to leave Pakistan lawfully, using his own national passport provided with a Schengen tourist visa. The Refugee Appeals Board therefore found that the author would not be at a real risk of persecution falling within section 7 (1) of the Aliens Act or treatment or punishment falling within section 7 (2) of the Act in case of return to Pakistan.

4.7 The State party submits that the Refugee Appeals Board considered the letter submitted by the author on 22 October 2013 as a request to reopen the case. The letter appeared to be sent by a person named A.G. and stated that the author would be at risk of persecution and harassment in case of his return to Pakistan because Benazir Bhutto had been overthrown as president and her successor, Asif Ali Zardari, considered the author an enemy. In his request to reopen the case, the author added that the general conditions in Pakistan had been difficult since 11 September 2011 due to the presence of the Taliban and Al-Qaida.

4.8 The State party submits that the Refugee Appeals Board decision of 21 March 2014 not to reopen the case is based on the fact that the letter had not provided new information regarding the author's specific difficulties in Pakistan, beyond the information already available and considered by the Board when it made its decision on 10 October 2012, and that the author failed to substantiate that he would be at a real risk of persecution or abuse falling within section 7 of the Aliens Act if returned to Pakistan. The Refugee Appeals Board further considered that the generally difficult conditions in Pakistan could not in itself justify a residence permit under section 7 of the Aliens Act.

4.9 The State party submits that, on 26 March 2014, the author once again requested a reopening of his asylum proceeding and presented three documents. The first document, dated 27 September 2012, appears to be a notice issued by Deputy Director M.A., relating

to a case brought against the author concerning the sale of Pakistan Steel Mills products at a price below market price and stating that it would be withdrawn if the author paid 3,082 Pakistan rupees. The second document, dated 18 February 2011, appears to be a notice issued by Advocate M.G.D., according to which the author has to pay 404,052.73 rupees as compensation for a financial loss suffered by Pakistan Steel Mills. The third document is identical to the document submitted by the author when he first requested that the Danish Refugee Board reopen the case. In an e-mail dated 7 April 2014, the author adds that the cases had been brought against his company, which had been taken over by force by a commercial director of Pakistan Steel Mills, and in that connection the author had been threatened and arrested. The author further stated that, during his stay in Denmark, he had received a message from the Pakistani intelligence service saying it had been unacceptable for him to leave Pakistan without notifying them.

4.10 The State party submits that the Refugee Appeals Board decision of 4 June 2014 not to reopen the case takes into account that no substantial, new information or views were submitted by the author in addition to the information available at the initial hearing by the Board. The Board observed that it could not accept the author's statement as grounds for seeking asylum, as he had failed to provide a reasonable explanation for applying for asylum only two and a half years after he had arrived in Denmark or a coherent and convincing statement of his conflict with the intelligence service. It also observed that his statements were divergent in other aspects and that he had departed lawfully from Pakistan using his own national passport. The Board reiterated it could not accept the author's statement of his grounds for asylum as a fact and found that the documents submitted, in view of the timing of their production, their nature and their contents, seemed fabricated and could not allow a different assessment of the credibility of his grounds for seeking asylum. The Board took into consideration the information provided in the country of origin information published by the British Home Office on 9 August 2013 stating that forged documents are widely used and easy to obtain in Pakistan.[4]

4.11 Regarding the legal basis for decisions made by the Danish Refugee Appeals Board, the Board will generally consider that the conditions for issuing a residence permit under section 7 (2)[5] of the Aliens Act are met when there are specific and individual factors substantiating that the asylum seeker will be exposed to a real risk of suffering the death penalty or of being subjected to torture or inhuman or degrading treatment or punishment in case of return to the country of origin. The Aliens Act further provides that any refusal of a claim for asylum must always be accompanied by a decision as to whether the alien in question can be removed from Denmark if he or she does not voluntarily leave the country and that an alien may not be returned to a country where he or she will be at a risk of incurring the death penalty or of being subjected to torture or inhuman or degrading treatment or punishment, or where the alien will not be protected from being sent to such country (sects. 31 and 32a). The State party submits that, to ensure that the Board makes its decisions in accordance with those obligations, it and the Immigration Service have jointly drafted a number of memorandums describing in detail the legal protection of asylum seekers afforded by international law, in particular the Convention relating to the Status of Refugees, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the European Convention on Human Rights and the International Covenant on Civil and Political Rights.

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[4] Danish Refugee Appeals Board decision of 4 June 2014, p. 2.

[5] Under the Aliens Act section 7 (2), a residence permit will be issued to an alien upon application if the alien risks the death penalty or being subjected to torture or inhuman or degrading treatment or punishment in case of return to the country of origin.

4.12 The State party submits that, for the purpose of assessing the evidence, under section 40 of the Aliens Act the asylum seeker is required to provide such information as is necessary for deciding whether section 7 of the Act applies to him or her. It is thus incumbent upon an asylum seeker to substantiate that the conditions for granting of asylum are met. If the asylum seeker's statements appear coherent and consistent, the Refugee Appeals Board will normally accept them as facts. However, inconsistent statements by the asylum seeker about crucial parts of his grounds for seeking asylum may weaken his credibility.

4.13 Regarding the author's claims under articles 6 and 7 of the Covenant, the State party submits that the author has failed to establish a prima facie case for the purpose of admissibility of his communication, and there are no substantial grounds for believing that, if returned to Pakistan, the author would be in danger of being deprived of his life or being subjected to torture or other cruel, inhuman or degrading treatment or punishment. The State party submits that this part of the communication is manifestly ill-founded and should be considered inadmissible.

4.14 Regarding the author's claim under article 14, the State party refers to the Committee's Views, under which proceedings related to the expulsion of an alien do not fall within the ambit of a determination of "rights and obligations in a suit of law" within the meaning of article 14 (1) but are governed by article 13 of the Covenant[6] and submits that this part of the communication should therefore be considered inadmissible *ratione materiae* pursuant to article 3 of the Protocol.

4.15 Regarding the author's claim under article 18, arguing that a decision to deport him to Pakistan "is against a right to political freedom", the State party notes that, under article 18, everyone has the right to freedom of thought, conscience and religion and submits that the author has failed to provide any details of how the State party has or would have any responsibility in that connection. The State party submits that this part of the communication should be considered manifestly ill-founded and therefore inadmissible, since the author has failed to establish a prima facie case under article 18 of the Covenant and has not sufficiently substantiated that there are substantial grounds for believing that his rights will be violated by his return to Pakistan.

4.16 The State party further observes that the author does not claim his rights under article 18 were violated while in the State party's territory or in an area under its effective control or due to the conduct of the State party authorities, and in his communication the author is seeking to apply the obligations under article 18 of the Covenant in an extraterritorial manner. The State party submits that the Committee lacks jurisdiction over the relevant violation with respect to the State party and this part of the communication is incompatible with the provisions of the Covenant. The State party submits that it cannot be held responsible for violations of article 18 expected to be committed by another State party outside the territory and jurisdiction of the State party. The State party considers that extraditing, expelling or otherwise removing a person in fear of having his rights under article 18 violated by another State party will not cause such irreparable harm as that contemplated by articles 6 and 7 of the Covenant, and submits that this part of the communication should also be rejected as inadmissible *ratione loci* and *ratione materiae* pursuant to rules 96 (a) and (d) of the Committee's rules of procedure and article 2 of the Optional Protocol.

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[6] See communications No. 2007/2010, in *J.J.M. v. Denmark*, Views adopted on 26 March 2014, para. 8.5, and No. 2186/2012, *Mr. X and Ms. X v. Denmark*, Views adopted on 22 October 2014, para. 6.3.

4.17 The State party submits that should the Committee find the author's application admissible and that he has not sufficiently established that his return to Pakistan would constitute a violation of articles 6 and 7 of the Covenant. The State party observes that no new information came to light through the communication and agrees with the assessment made by the Refugee Appeals Board that the author's statement of his grounds for asylum cannot be considered credible. The State party observes that the author's activities with the Pakistan Peoples Party occurred far back in time and that the information provided about the inquiries made by the Pakistani intelligence service appears incoherent and unsubstantiated. The State party further observes that the fact that the author's brothers were granted asylum in Denmark in the 1980s cannot lead to a different assessment of the author's claim, as he was able to stay in Pakistan for many years without any problems arising from his own political conviction or his brothers' activities. The State party agrees with the Refugee Appeals Board in considering that the general conditions in Pakistan cannot in themselves lead to the granting of residence to the author under section 7 of the Aliens Act.

4.18 The State party observes that the Refugee Appeals Board, which is a collective body of quasi-judicial nature, made its decision of 12 December 2012 based on a procedure during which the author had the opportunity to present his views, both in writing and orally, with the assistance of legal counsel, and that the Board conducted a comprehensive and thorough examination of the evidence in the case. The State party notes that, by failing to provide any new, specific details about his situation, the author is trying to use the Committee as an appellate body to have the factual circumstances of his asylum request reassessed by the Committee. Finally, the State party submits that the Committee must give considerable weight to the findings of the Refugee Appeals Board, which is better placed to assess the factual circumstances of the author's case.

Author's comments on the State party's observations

5. On 15 September 2015, the author submitted his comments on the State party's submission. The author maintains that, on the basis of the information presented in his communication to the Committee, his return to Pakistan would result in a violation of the rights under articles 6 and 7 of the Covenant. The author reiterates that he is in danger of being deprived of his life, as mentioned in the initial communication, and notes the recent constitution of military courts in Pakistan and the lifting of the death penalty moratorium and that as a member of the Pakistan Peoples Party he is personally and directly affected by the policies and practices of Pakistan. In addition, the author clarifies that the reference to the right to political freedom was to invoke article 19 of the Covenant. The author claims that, on his return to Pakistan, he could most certainly expect to be victimized due to his political opinions or beliefs considering that the "culture of political victimization in Pakistan is ingrained in the social and political elite and that [it] is still very strong and well-rooted in the society".

State party's additional observations

6. On 13 January 2016, the State party submitted that the information provided by the author on 15 September 2015 does not give rise to any further comments by the State party. Regarding the author's new reference to article 19 of the Covenant, the State party submits that this part of the communication should also be considered inadmissible *ratione loci* and *ratione materiae* pursuant to rule 96 of the Committee's rules of procedure and article 2 of the Optional Protocol. The State party thus maintains that the communication should be declared inadmissible but, if the Committee decides to consider it admissible, it maintains that the return of the author to Pakistan will not result in a violation of the provisions of the Covenant.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 Before considering any claim contained in a communication, the Committee must, in accordance with rule 93 of its rules of procedure, decide whether the communication is admissible under the Optional Protocol.

7.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

7.3 The Committee notes the author's claim that his deportation to Pakistan would expose him to a violation of articles 6 and 7 because of the intelligence services' interest in him. The Committee also notes the State party's argument that the author's claims with respect to articles 6 and 7 of the Covenant should be declared inadmissible owing to insufficient substantiation. The Committee observes that the author's claims under articles 6 and 7 of the Covenant were thoroughly assessed by the State party's authorities, which found that the information submitted by the author about the motive for seeking asylum and his account of the events that caused his fear of being killed or tortured if returned to Pakistan was not coherent or credible.

7.4 The Committee recalls its general comment No. 31,[7] in which it refers to the obligation of States parties not to extradite, deport, expel or otherwise remove a person from their territory where there are substantial grounds for believing that there is a real risk of irreparable harm, such as that contemplated in articles 6 and 7 of the Covenant. The Committee has also indicated that the risk must be personal and that the threshold for providing substantial grounds to establish that a real risk of irreparable harm exists is high.[8] The Committee further recalls its jurisprudence that considerable weight should be given to the assessment conducted by the State party and that it is generally for the organs of the States parties to the Covenant to review or evaluate facts and evidence in order to determine whether such risk exists,[9] unless it is found that the evaluation was clearly arbitrary or amounted to a manifest error or to a denial of justice.[10] The Committee observes that the author disagrees with the factual conclusions of the State party's authorities, but the information before the Committee does not show that those findings are manifestly unreasonable or that the authorities had failed to take properly into account any risk factor. Moreover, the author has not pointed to any procedural irregularities in the decision-making procedure by the Danish Immigration Service or the Refugee Appeals Board.

7.5. In the light of the above considerations, the Committee considers that the author has not sufficiently substantiated the allegations under articles 6 and 7 of the Covenant for the purposes of admissibility. Accordingly, the Committee considers these claims inadmissible under article 2 of the Optional Protocol.

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[7] See general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, para. 12.

[8] See communications No. 2007/2010, *X v. Denmark*, para. 9.2; No. 692/1996, *A.R.J. v. Australia*, Views adopted on 28 July 1997, para. 6.6; and No. 1833/2008, *X. v. Sweden*, Views adopted on 1 November 2011, para. 5.18.

[9] See communication No. 1957/2010, *Lin v. Australia*, Views adopted on 21 March 2013, para. 9.3.

[10] See, inter alia, ibid. and communication No. 541/1993, *Errol Simms v. Jamaica*, decision of inadmissibility adopted on 3 April 1995, para. 6.2.

7.6 The Committee notes the author's claim that the decisions of the Refugee Board become final without a possibility of being appealed to courts and that the State party thus violates articles 14 of the Covenant. In that regard, the Committee refers to its jurisprudence that proceedings relating to the expulsion of aliens do not fall within the ambit of a determination of "rights and obligations in a suit at law" within the meaning of article 14 (1) but are governed by article 13 of the Covenant.[11] Article 13 of the Covenant offers some of the protection afforded by article 14 (1) of the Covenant but not the right of appeal.[12] The Committee therefore considers that the author's claim under article 14 is inadmissible *ratione materiae* pursuant to article 3 of the Optional Protocol.

7.7 In relation to the author's claims with respect to article 19 of the Covenant, the Committee considers that these claims cannot be dissociated from his claims under articles 6 and 7 of the Covenant and are thus likewise insufficiently substantiated and inadmissible under article 2 of the Optional Protocol.

8. The Committee therefore decides that:

(a) The communication is inadmissible under articles 2 and 3 of the Optional Protocol;

(b) The decision should be transmitted to the State party and to the author.

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[11] See, inter alia, communication No. 2186/2012, *Mr. X and Ms. X v. Denmark*, para. 6.3; communication No. 1494/2006, *A.C. et al. v. Netherlands*, decision of inadmissibility adopted on 22 July 2008, para 8.4; and communication No. 1234/2003, *P.K. v. Canada*, of 20 March 2007, paras. 7.4 and 7.5.

[12] See general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, paras. 17 and 62.

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